



# Freedom Network USA

January 15, 2020

VIA EMAIL to [tipreportUS@state.gov](mailto:tipreportUS@state.gov)

Keri Johnstone  
Acting Director  
US Department of State  
Office to Combat and Monitor Trafficking in Persons (JTIP)  
2201 C Street NW, SA-09 Suite NE3054  
Washington DC 20520

## **RE: Freedom Network USA's Input for the 2020 Trafficking in Persons Report**

Acting Director Johnstone:

Freedom Network USA (FNUSA) acknowledges the continued efforts of the US Government to improve upon its commitment to address human trafficking, both here and abroad. FNUSA is pleased that an assessment of anti-trafficking efforts in the US will continue to be incorporated into the 2020 Trafficking in Persons (TIP) Report. In recognition of the 20<sup>th</sup> anniversary of the Trafficking Victims Protection Act (TVPA) and the adoption of the United Nations Palermo Protocol we would like to reflect on the challenges and weaknesses that remain in the US' efforts and the opportunities that lie ahead.

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the US. Since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), FNUSA members have worked to ensure that trafficking survivors receive the full array of legal and social services needed, and that they are engaged in ensuring effective implementation of the law. FNUSA members include: survivors who experienced both sex and labor trafficking in the US, prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge lawsuits against traffickers, criminal attorneys who have represented survivors wrongly charged with a crime, immigration attorneys who have represented hundreds of individuals granted T and U visas, and social service providers who have assisted thousands of survivors --- both US citizens and foreign nationals, minors and adults, across the gender spectrum.

We write to offer information about the successes as well as challenges facing the US Government in our shared mission to address human trafficking in the US. Overall, we note that the US Government data and efforts show a net reduction in efforts and impact to prevent human trafficking, protect survivors, and to prosecute traffickers. We note this trend with great concern and dismay, and urge the State Department to carefully consider these trends when considering the Tier ranking for the US for 2020. Although our comments are not an exhaustive list of all of the US Government efforts that impact human trafficking, we focus on the most salient in this list.

## **1. Recommendations Regarding US Government Enforcement of Anti-Trafficking Laws and Prosecution Efforts**

### ***A. The US Government Must Increase Transparency Through Regular Reporting***

As noted in the Federal Register Notice Request for Information, the most detailed information on US Government anti-trafficking efforts is included in the annual Attorney General's Report to Congress and Assessment of US Government Activities to Combat Human Trafficking (AG Report) as mandated by the Trafficking Victims Protection Act (TVPA) codified at 22 USC 7103(d)(7).<sup>1</sup> However, the US Government has failed to submit this vital report for the past two years. The most recent report available covers FY17. This failure leaves government agencies, nongovernmental organizations, and survivors with incomplete information about the efforts and impact of the US Government.

***Recommendation:*** *The US Government must comply with the law and release the report annually so that governments and civil society have access to the most accurate information about the government's efforts to address human trafficking.*

### ***B. The US Government Must Increase Investigation and Prosecution of Labor Trafficking Cases***

As FNUSA continues to emphasize, the US Government needs to increase its investigation and prosecution of labor trafficking cases, a concern we reiterate for this year's report. Although FNUSA commends several recent initiatives to increase the investigation and prosecution of labor trafficking in cases involving employment-based visas, such as increased oversight of the J-1 Visa Exchange Visitor Program, data sharing between Department of Homeland Security (DHS) and the Department of Labor (DOL), as well as publication of H-2B recruiters, FNUSA remains concerned about the low number of investigations and prosecutions involving labor trafficking compared to sex trafficking.

According to the State Department's 2019 Trafficking in Persons Report,<sup>2</sup> in FY 2018 the Department of Justice (DOJ) brought "a total of 230 federal human trafficking prosecutions ... a significant decrease from 282 in FY 2017, and charged 386 defendants, a significant decrease from 553 in FY 2017." 213 prosecutions (down from 266 in FY17) involved predominantly sex

---

<sup>1</sup> Request for Information for the 2020 Trafficking in Persons Report, 84 FR 67505, p67506.

<sup>2</sup> Department of State, Trafficking in Persons Report: June 2019, hereinafter 2019 TIP Report, p485, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

trafficking and 17 involved predominantly labor trafficking.<sup>3</sup> Further details about the defendants and charges are not available from the TIP Report, an example of the need for the US to comply with the law and release the FY18 AG Report immediately, and the FY19 AG Report as soon as possible. The available data indicates that approximately 94% of DOJ's prosecutions and convictions are for sex trafficking cases, and only 6% are for labor trafficking cases.

Service providers in the US, however, tell a very different tale of human trafficking in the US, identifying far higher percentages of labor trafficking victims. FNUSA members are serving a much more balanced division of cases, reporting that 58% of their clients were survivors of sex trafficking, 30% were survivors of labor trafficking, and 9% were survivors of both.<sup>4</sup> DOJ's human trafficking services grantees served 8,913 trafficking clients and "reported that 66 percent of clients served were victims of sex trafficking, 20 percent were victims of labor trafficking, five percent were identified as victims of both sex and labor trafficking, and the form of trafficking for nine percent was unknown."<sup>5</sup> HHS issued 412 Certification Letters to adult survivors of human trafficking, and 466 Eligibility Letters to minors in FY18. Of those adults, 69% were survivors of labor trafficking, 22% were survivors of sex trafficking, and 8% were survivors of both sex and labor trafficking. Of the minors, 67% were survivors of labor trafficking, 27% were sex trafficking survivors, and 6% were survivors of both labor and sex trafficking.<sup>6</sup> Additionally, since 2003, the vast majority of cases brought under the private right of action provided in the TVPRA – more than 80% – allege forced labor.<sup>7</sup>

***Recommendation:*** *Based on these numbers, FNUSA is troubled that survivors of forced labor cannot rely on the US Government to obtain justice and compensation. We call on the US Government to increase investigation and prosecution of cases involving labor trafficking. FNUSA also looks forward to the timely release of the Attorney General's Trafficking in Persons Reports for FY 2018 and FY 2019 to have more detailed data on labor trafficking investigations and prosecutions.*

### **C. The US Government Must Increase Efforts to Award Criminal Restitution in All Human Trafficking Cases**

FNUSA continues to be concerned about the US Government's failure to order mandatory criminal restitution in all human trafficking cases, and the woefully low rate of payment of restitution once it is ordered. According to the report, "When 'Mandatory' Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the United States," courts awarded mandatory restitution to trafficking victims in just 36% of

---

<sup>3</sup> TIP Report, p485.

<sup>4</sup> Freedom Network 2018 Member Report, p10, data reflecting services provided from 1/1/15 to 12/31/16, <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>.

<sup>5</sup> 2019 TIP Report, p486.

<sup>6</sup> 2019 TIP Report, p487.

<sup>7</sup> Data on file with the Human Trafficking Legal Center, <http://www.htlegalcenter.org>

human trafficking cases brought between 2009 and 2012.<sup>8</sup> Even after this disturbing report was provided to the US Government, little improvement has been made. “Data collected and analyzed since the publication of the initial findings provide a disheartening portrait of a continuing failure on the part of United States federal courts to order criminal restitution to trafficking victims. The updated data indicated that the percentage of trafficking cases ending with a mandatory criminal restitution order dropped from 36% in the prior period to just 27% in the current research date range.”<sup>9</sup>

***Recommendation:*** *FNUSA recommends that the US Government increase and improve training for prosecutors and judges about mandatory restitution in human trafficking cases, provide resources to assist prosecutors in presenting their arguments in court, and provide trafficking victims with victim-witness counsel to advocate for restitution and other victims’ rights issues before federal courts. FNUSA additionally recommends that the US Government use all authorities at their disposal to ensure that restitution is actually paid to survivors, including use of impoundment and forfeiture, as well as the authorities of the State Department and Treasury including sanctions, freezing foreign assets, limitations on diplomatic visas and downgrading TIP Report rankings.*

## **2. Service Provision, Treatment, and Protection of Human Trafficking Survivors**

FNUSA notes with gratitude that the US Government provides significant funding and support for human trafficking survivors. Most notably, funding appropriations for victim services grants have continued to increase to over \$100 million annually, and US law provides for significant immigration protections for trafficking survivors including Continued Presence and the T and U Visas. DHS produced new training resources in 2019 aimed at increasing law enforcement use of Continued Presence, including 3 new videos and 1 new brochure that clarifies that law enforcement **should** file an application for Continued Presence for all trafficking survivors. DHS also added more Victim Assistance Specialists and Forensic Interviewers within Homeland Security Investigations, which should provide additional support and protections for survivors while HSI investigates the trafficking case. We also commend the State Department for launching a new consultant pool to increase the use of survivor consultants within the development of US Government policies, procedures, and programs to address human trafficking. However, these improvements are not sufficient, and have been accomplished within a general rollback of protections and support for the most vulnerable.

### **A. DOJ Must Restore Access to the Full Range of Critical Legal Services**

FNUSA strongly objects to OVC’s decision to disallow grant funding for representation in vacatur and expungement cases for trafficking survivors. This policy continues to cause wide-

---

<sup>8</sup> The Human Trafficking Pro Bono Legal Center and WilmerHale, When “Mandatory” Does Not Mean Mandatory: Failure To Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States, September 2014, available at <http://www.htprobono.org/htprobono-mandatoryrestitution-report-9-2014> .

<sup>9</sup> The Human Trafficking Legal Center and WilmerHale, United States Federal Courts’ Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims, September 2018, p1, available at <http://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>.

ranging harm to trafficking survivors, and is the antithesis of victim-centered service provision. Survivors with criminal records often remain excluded from the job and housing markets, ineligible for government programs, and are forced to relive their trauma whenever they are forced to explain their criminal records. These challenges keep survivors from attaining full independence and success, forcing them to remain reliant on government-funded programs for extended periods of time and remain stuck in low-wage work, often in the same industries into which they were trafficked. These factors create vulnerability to future incidents of abuse and exploitation, including human trafficking. A wide range of service providers, survivors, law enforcement officials, legal experts, and prosecutors have called on OVC to reverse this harmful policy.<sup>10</sup> OVC has not publicly addressed this policy change, or explained or justified its position.

***Recommendation:*** FNUSA calls on DOJ to ensure victim-centered services are available for all survivors by immediately reversing this harmful, and ultimately expensive and wasteful, policy. FNUSA recommends removing the restriction on all current and future grant awards and programs.

### **B. DOJ Must Fully Expend Trafficking Victim Services Appropriations in a Nondiscriminatory Process**

In 2019, HUD abruptly cancelled a housing grant program for human trafficking survivors, that was to be funded by FY17 appropriations.<sup>11</sup> Although DOJ has since released a similar grant opportunity<sup>12</sup>, all indications are that the new program will be funded with FY20 appropriations. It seems, therefore, that the US Government failed to spend over \$13 million of trafficking victim services funds, appropriated by Congress under the authority of the TVPA, for victim needs while survivors continue to struggle with access to long-term housing.

Additionally, press reports indicate that the DOJ has been engaged in inappropriate grant decision-making.<sup>13</sup> Reports indicate the Administration officials have improperly excluded grant reviewers for human trafficking program grants, and may have improperly selected grant recipients based on their political opinions and comments.

<sup>10</sup> See FNUSA's blog on this effort and the letters sent to OVC at <https://freedomnetworkusa.org/freedom-network-usa-leads-broad-based-effort-to-protect-legal-representation-for-trafficking-survivors/>.

<sup>11</sup> Suzy Khimm and Laura Strickler, NBC News, 10/1/19, "Trump admin delays funds for human-trafficking victims that would help non-citizens," <https://www.nbcnews.com/politics/politics-news/trump-admin-delays-funds-human-trafficking-victims-would-help-non-n1060841>; Ellen Wulfhorst, Reuters, 10/2/2019, "Supporters scramble as U.S. anti-trafficking funds are postponed," <https://www.reuters.com/article/us-usa-trafficking-grant/supporters-scramble-as-u-s-anti-trafficking-funds-are-postponed-idUSKBN1WH2MQ>.

<sup>12</sup> US DOJ Office for Victims of Crime, Housing Assistance for Victims of Human Trafficking, OVC FY 2020 Competitive Grant Solicitation, <https://www.ovc.gov/grants/pdf/FY-2020-Housing-Assistance-Grants-for-Victims-of-Human-Trafficking.pdf>.

<sup>13</sup> Sarah Lynch, Reuters, 9/4/2019, "Union says Trump appointee may be improperly influencing Justice Department crime victim grants," <https://www.reuters.com/article/us-usa-justice-grants/union-says-trump-appointee-may-be-improperly-influencing-justice-department-crime-victim-grants-idUSKCN1VP28C>; and Ted Guest, The Crime Report, 12/27/19, "Federal Crime Victims Chief Departs, No Reason Given," <https://thecrimereport.org/2019/12/27/hutchinson-biehl-out-as-federal-crime-victim-chief/>

***Recommendation:*** *The US Government must ensure that all federal appropriations for trafficking victim services are fully expended, as directed by Congress and following a nondiscriminatory process, each year. FNUSA calls on DOJ to explain why the FY17 appropriation was not fully expended, why the HUD Housing Program was cancelled, and what changes will be made in their grantmaking process to ensure that appropriations will be fully and properly expended in the future.*

**C. US Government Must Address Child Labor Trafficking Survivors, Not Just Sex Trafficking Survivors, in the Child Welfare System**

The Preventing Sex Trafficking and Strengthening Families Act required new data collection, training, and reporting efforts by child welfare agencies, but explicitly included only sex (and not labor) trafficking. While at least a dozen states have chosen to extend their efforts to include child labor trafficking, in addition to the mandated efforts to address child sex trafficking, most have not.<sup>14</sup> Over the last five years, the US Government has failed to identify all trafficking victims in the child welfare system due to this focus on sex trafficking only. A recent report by Coalition to Abolish Slavery & Trafficking (CAST) highlights the disparate treatment of child labor and sex trafficking victims in the child welfare system in California, which provides an example of what is happening across the US.<sup>15</sup>

***Recommendation:*** *FNUSA calls on the US Government to immediately include all forms of child trafficking in their data collection, victim identification, training, and service provision efforts. Additionally, FNUSA calls on HHS to expand the National Advisory Committee on the Sex Trafficking of Children and Youth to include both sex and labor trafficking. States must ensure their child welfare systems prevent, identify, and serve all forms of trafficking victims.*

**D. The US Government Must Strengthen, and Stop Eroding, Protections for Immigrants as a Key Element of a Comprehensive Approach to Human Trafficking**

**1. Hostility Toward Immigrants Increases Risk of Trafficking, Barriers to Escape**

US Government policies are creating a hostile environment for immigrants, increasing their risk of trafficking, and making it more challenging for survivors of human trafficking to access services and support. The issues and concerns raised by FNUSA in its comments for the 2018 and 2019 TIP Reports have only worsened. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,<sup>16</sup> threats of punishment against ‘sanctuary’ jurisdictions, and increased barriers to

<sup>14</sup> CAST, October 2019, “Child Labor Trafficking in California,” <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>, p22.

<sup>15</sup> CAST, October 2019, “Child Labor Trafficking in California,” <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

<sup>16</sup> See ICE Memo revising Sensitive Locations Policy, January 10, 2018, <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>, and press articles describing courthouse arrests: ICE Making Arrests at Fresno Courthouse, and Attorneys Concerned Over Due Process, July 24, 2018 and updated August 31, 2018,

immigration relief, have had a direct and marked impact on immigrant survivors of abuse and exploitation<sup>17</sup>, including human trafficking. The cumulative effects of the US Government's immigration policies and rhetoric have stopped immigrant survivors of human trafficking from seeking protection from law enforcement and from accessing legal and social services. It has been reported that victims are likely to remain in trafficking situations longer, as they believe that the US Government will not protect them from harm.<sup>18</sup> The reported decreases in investigations and prosecutions of labor and sex trafficking (see above section 1B) are the inevitable result of this fear of law enforcement.

***Recommendation:*** FNUSA calls on the US Government to immediately stop using language and statements that dehumanize immigrants or portrays them as dangerous, criminal, or detrimental to the US economy. Data shows that immigrants are less likely to commit crime and contribute more to the US economy than similarly situated US born residents. The US Government must honestly and accurately portray the role and position of immigrants in the US, and work to ensure their safety.

## **2. DOJ Limits on Asylum and Immigration Courts Harm Trafficking Survivors**

The US Government's limitations on protections for asylum-seekers and immigrants in removal proceedings also harm human trafficking survivors. In *Matter of A-B-*, Former Attorney General Jeff Sessions sought to limit asylum eligibility for victims of domestic violence, gangs, and other private actors. FNUSA members have represented numerous immigrants who were trafficked by family members, gangs, and other private actors outside of the US, but then fled to the US for protection. These human trafficking survivors have relied on asylum due to their fear of persecution, or actual retaliation being inflicted upon the victim and/or their family members, from their traffickers. Additionally, other recent immigration decisions, including *Matter of L-A-B-R-*, *Matter of S-O-G- & F-D-B-*, and *Matter of Castro Tum*, and case completion quotas for immigration judges, the US Government has created significant procedural hurdles, restricted the role of immigration judges, and undermined due process in an attempt to streamline removal procedures and use the courts as an immigration enforcement mechanism.<sup>19</sup> Restrictions on the number of immigrants processed at ports of entry, also known as metering,

---

<https://www.fresnobee.com/news/local/crime/article215404565.html>; ICE Arrests Go Too Far, February 7, 2018, <https://www.houstonchronicle.com/opinion/editorials/article/ICE-arrests-12560056.php>; ICE's Arrest Policy at Courthouse Raises Alarm in Connecticut's Legal Community, July 9, 2018, <https://www.law.com/ctlawtribune/2018/07/09/ices-arrest-policy-at-courthouses-raises-alarm-in-connecticuts-legal-community/?slreturn=20190010164917>

<sup>17</sup> Immigrant Survivors Fear Reporting Violence, 2019, <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

<sup>18</sup> See Cast, Freedom Network USA, and Polaris report, "2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking," <https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>; and "In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown, December 18, 2018, <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown>

<sup>19</sup> AILA Policy Brief: Restoring Integrity and Independence to America's Immigration Courts, September 28, 2018, available at <https://www.aila.org/File/DownloadEmbeddedFile/77605>

along with the ‘Migrant Protection Protocol’ puts trafficking survivors seeking protection in the US at high risk of abuse and exploitation in Mexico, and limits their access to the social and legal services they need for protection and healing.<sup>20</sup> Additionally, trafficking survivors, like most trauma survivors, need time and a safe place to process their trauma sufficiently to be able to provide the information needed by asylum agents to properly assess their claims. The effects of these policies will prevent many human trafficking survivors from attaining legal status by closing off asylum as a potential legal avenue, hindering them from securing counsel due to limited continuances in immigration court (as lawyers must spend more time and effort on each case, they will take fewer cases, and immigrants will be unable to retain a lawyer before their immigration hearings), and precluding them from securing collateral relief from USCIS. Current processing times for T Visas now exceed 24 months.<sup>21</sup> Survivors who are already in removal proceedings are now at high risk of being removed from the US **before** their T Visa applications are adjudicated.<sup>22</sup> This also limits the ability of survivors to assist in the investigation and prosecution of the traffickers, if they are removed from the US. Thus, these policies, again, protect traffickers instead of trafficking survivors.

***Recommendation:*** FNUSA calls on the US Government to immediately reverse these and other policies that restrict and deny due process to immigrants, especially for immigrants seeking asylum and other humanitarian protections in the US.

### **3. USCIS Policy: Notice to Appear- Targets Trafficking Survivors**

DHS policies that restrict access to immigration relief are directly increasing abuse and exploitation of immigrants, and exhibit a striking failure of the US Government to comply with international and US standards for the protection of victims. One horrifying example of the US Government’s failure to protect human trafficking survivors is DHS’ policy to put immigrants in removal proceedings if their applications for T and U Visas and other forms of humanitarian relief are denied.<sup>23</sup> This decision contradicts the intent and spirit of the T and U Visas, which

---

<sup>20</sup> See, for example, Human Rights First, 12/5/2019, “HRF Reports Escalating Human Rights Abuses Against Asylum Seekers Returned to Mexico,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>; Jonathan Blitzer, The New Yorker, 10/1/2019, “How the U.S. Asylum System is Keeping Migrants at Risk in Mexico,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>; Gus Bova, Texas Observer, 9/30/2019, “Attacked in Mexico, Returned to Mexico: Trump Policy Ignores Danger to Asylum-Seekers,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>

<sup>21</sup> USCIS provides current case processing time estimates for forms (including the I-914 Application for T Nonimmigrant Status) at <https://egov.uscis.gov/processing-times/> and historical averages at <https://egov.uscis.gov/processing-times/historic-pt.>

<sup>22</sup> Yael Schacher, Refugees International, May 2019, <https://www.refugeesinternational.org/reports/2019/5/21/abused-blamed-and-refused-protection-denied-to-women-and-children-trafficked-over-the-us-southern-border>

<sup>23</sup> See USCIS’ June 28, 2018 NTA Memo, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>, and November 8, 2018 notice that the NTA policy would be extended specifically and solely to humanitarian visas <https://www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear>

were created to encourage immigrant victims of human trafficking and other crimes to come forward and assist in investigations and prosecutions, as well as DHS' own announcement that this policy would NOT be enforced against humanitarian visas.<sup>24</sup> However, because of this change in policy, FNUSA members report their clients are increasingly afraid of reporting criminal activity and applying for immigration relief. Not only has this policy deterred many immigrants from accessing available legal protections, it has also contributed to a decrease in investigations and prosecutions of human trafficking, as immigrant survivors of human trafficking are reluctant to report their traffickers and cooperate with law enforcement.<sup>25</sup> This allows traffickers to operate with impunity due to the failure of the US government to protect survivors. Survivors, meanwhile, remain undocumented in a volatile political environment and are foreclosed from formal employment opportunities, housing and other resources that would prevent their re-victimization.

***Recommendation:*** FNUSA calls on DHS to immediately reverse this policy and return to the previous practice of only taking enforcement action against humanitarian visa applicants in compelling circumstances.

#### **4. USCIS Practice: Increased Requests for Evidence and Denials in T Visa Cases- Harms Human Trafficking Survivors**

FNUSA members and others also report increased barriers to obtaining T Visas in the form of frequent Requests for Evidence (RFEs) and denials that contravene legal standards.<sup>26</sup> Recent RFEs and denials have included victim-blaming language and clear errors of law, in which USCIS adjudicators improperly read and interpret the Immigration and Nationality Act (INA) and the 2016 regulations put out by USCIS itself. For example, adjudicators have sought justification as to why the survivor has not left the US since escaping from the trafficking situation, even though the 2016 regulations expressly removed the language contained in the previous regulations regarding whether the survivor had a “clear chance to leave.”<sup>27</sup> Additionally, USCIS has frequently read INA § 212(d)(13) incorrectly, thereby preventing some immigrant survivors from receiving status due to crimes that their traffickers forced them to commit. As each day

---

<sup>24</sup> See USCIS' guidance on the NTA memo dated September 27, 2018, stating, “We will not implement the June 2018 NTA Policy Memo with respect to ... humanitarian applications and petitions at this time.” [https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS\\_Updated\\_Policy\\_Guidance\\_on\\_Notice\\_to\\_Appear\\_NTA.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Updated_Policy_Guidance_on_Notice_to_Appear_NTA.pdf)

<sup>25</sup> See Cast, Freedom Network USA, and Polaris report, “2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking,” <https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>; and “In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown, December 18, 2018,” <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown>

<sup>26</sup> Yael Schacher, Refugees International, May 2019, <https://www.refugeesinternational.org/reports/2019/5/21/abused-blamed-and-refused-protection-denied-to-women-and-children-trafficked-over-the-us-southern-border>

<sup>27</sup> “Removes the current regulatory “opportunity to depart” requirement for those who escaped their traffickers before law enforcement became involved; 8 CFR 214.11(g)(2).” Fed. Reg. Vol. 81 No. 43, December 19, 2016, at 92268.

without status is another day of vulnerability for a victim of trafficking, RFEs are increasing challenges to properly serving survivors and impact survivors' decision to come forward at all. The recently released USCIS T Visa data reveals an increase in denials for T Visas that indicates the danger of these interpretations.<sup>28</sup>

***Recommendation:*** *FNUSA recommends that USCIS provide regular training for USCIS adjudicators that includes detailed guidance on the updated regulations, examples of actual trafficking situations, explanation of the impact of trauma on survivors, instructions on drafting victim-centered RFEs, and which is developed with the input of survivors to ensure that it properly and accurately reflects the lives, fears, and motivations of trafficking victims.*

##### **5. USCIS Practice: Fee Waiver Guidance- Harms Human Trafficking Survivors**

Another new obstacle to securing immigration relief concerns increased denials of fee waivers and revisions to the standards for fee waivers.<sup>29</sup> FNUSA strongly opposes the changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.<sup>30</sup> Instead, FNUSA calls on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life-saving protections. The proposed revisions directly conflict with the intent of Congress to provide access to protection without fees for humanitarian visas, violate the evidentiary standard established for these visas, and cause significant burdens on survivors attempting to access protection and support law enforcement.

***Recommendation:*** *FNUSA recommends that USCIS rescind this policy revision.*

##### **6. USCIS Practice: Public Charge- Harms Human Trafficking Survivors**

FNUSA is also strongly opposed to the DHS, DOJ, and State Department changes regarding admissibility on public charge grounds, all of which are subject to injunctions<sup>31</sup> and is deeply concerned about the immense harm that the rule will have on immigrant survivors of human trafficking, as well as other forms of exploitation and violence. While some human trafficking survivors seeking specific forms of immigration status, including the T and U Visas, are exempt

<sup>28</sup> USCIS T Visa Statistics FY2019, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t\\_visastatistics\\_fy2019\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr4.pdf)

<sup>29</sup> USCIS is proposing revisions to existing fee waiver memo located at PM-602-0011.1 "Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26. (March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter "Fee Waiver Guidelines"). FNUSA also objects to USCIS making such substantive policy changes via form revision. The policy change is currently subject to a nation-wide injunction. <https://www.uscis.gov/i-912>

<sup>30</sup> Proposed Revisions at 49121. See FNUSA's Comments on the Proposed Fee Waiver Changes for a more detailed explanation of FNUSA's opposition, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/FNUSARevisedFeeWaiversComments.pdf>.

<sup>31</sup> American Immigration Lawyers Association, Featured Issue: Public Charge Changes at USCIS, DOJ, and DOS, <https://www.aila.org/advo-media/issues/all/public-charge-changes-at-uscis-doj-and-dos>; USCIS Public Charge, <https://www.uscis.gov/greencard/public-charge>

from the public charge ground of inadmissibility, most survivors will be unaware or unconvinced of the exemption, leaving them without the very services and protections that Congress has established. FNUSA members report that immigrant families are already withdrawing from, or choosing not to enroll in, assistance programs that support their basic needs due to fear, even though the rule has not taken effect. Not only will the rule, if implemented, impose significant human suffering costs on victims of human trafficking and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of untreated trauma.<sup>32</sup>

**Recommendation:** *FNUSA recommends that DHS, DOJ, and DOS rescind these policy revisions.*

### **7. USCIS Practice: Delays in T Visa Adjudications- Harms Human Trafficking Survivors**

Adjudication times for T Visa applications is currently 19.5-26.5 months<sup>33</sup>, a sharp increase from the 6-9 month period that was common only 2-3 years ago<sup>34</sup>. The prolonged length impacts trafficking survivors who are left out of status for longer periods of time. This also delays their receipt of employment authorization documents (EADs) and leaves them vulnerable to ongoing financial instability, a key risk factor in re-trafficking. Others are stuck in immigration detention, with limited access to the legal, social services, and family support they need to recover from their victimization. Even survivors with Continued Presence are impacted, as many prosecutors urge survivors to wait to file the T Visa application until after the investigation and prosecution is complete. Continued Presence, however, lasts only for 2 years. Once the investigation is closed, the Continued Presence status ends, and survivors are again left in limbo while they wait for another 2 years in unlawful status, and without employment authorization their T Visas to be adjudicated.

**Recommendation:** *FNUSA recommends that USCIS immediately provide sufficient training, staffing, and supervision and remove any restrictions, unnecessary requirements, or unnecessary reviews in order to adjudicate all immigration applications in a timely manner consistent with past precedent.*

### **8. DHS Practice: Mass Detention of Immigrants- Harms Human Trafficking Survivors**

Trafficking survivors are increasingly held in immigration detention, even when T Visas are pending. T Visa processing, as described above, now takes approximately 2 years, leaving traumatized trafficking survivors in unsafe, unsanitary conditions without access to sufficient medical and mental health care or adequate access to their attorneys.<sup>35</sup>

<sup>32</sup> See FNUSA's Comments on the Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds for a more detailed explanation of FNUSA's opposition, available at <https://freedomnetworkusa.org/app/uploads/2018/12/FNUSAPublicChargeComments2018DecFINAL.pdf>.

<sup>33</sup> Current processing times are provided by USCIS at <https://egov.uscis.gov/processing-times/>, the processing time for the I-914 is 19.5 to 26.5 months as accessed on 1/6/2020.

<sup>34</sup> USCIS reports processing times of 6.4 to 9 months for FY 2015 to FY 2017 at <https://egov.uscis.gov/processing-times/historic-pt>.

<sup>35</sup> See, for example, Von Werthern et al, BMC Psychiatry, 12/6/2019, The Impact of Immigration Detention on Mental Health: A Systemic Review, <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945->

***Recommendation:*** FNUSA recommends that DHS revert to previous policy guidance limiting detention of immigrants to cases that present, upon an individualized assessment, a threat to the community, allowing all immigrants increased access to legal counsel, healthcare, and reduced exposure to violence and trauma.

### **9. US Government’s Continuing Failure to Provide Continued Presence to Human Trafficking Survivors**

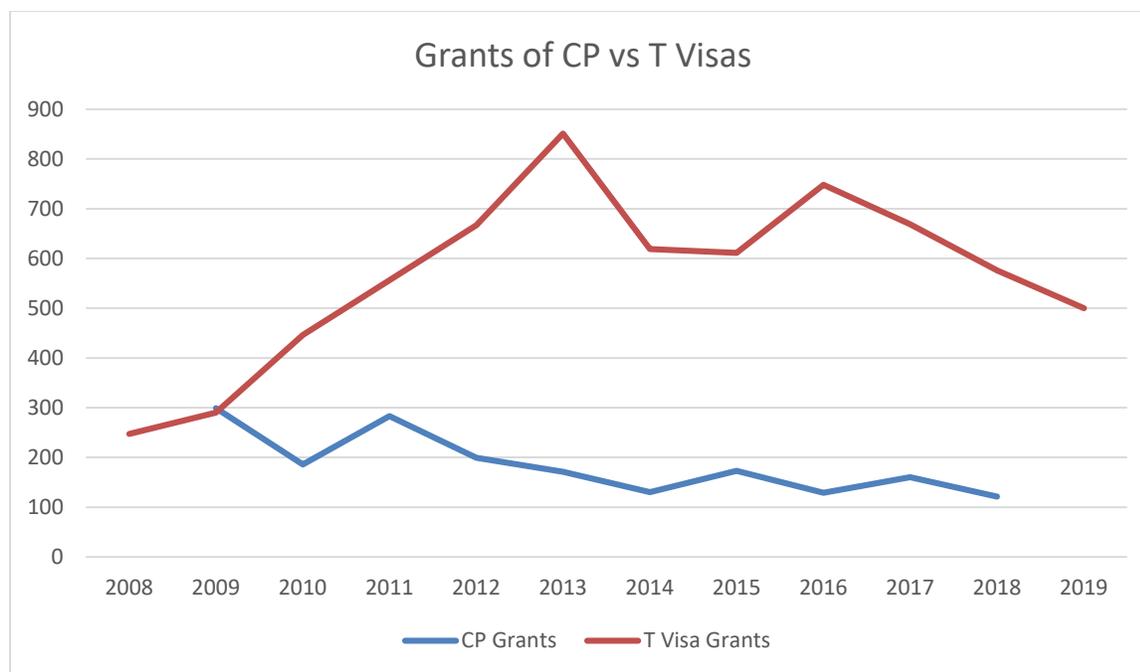
Although FNUSA commends DHS’s efforts to expand access to Continued Presence through revised guidance and new training materials including a new brochure and three new videos, we remain deeply concerned at the low number of Continued Presence grants issued to victims of trafficking. Foreign national survivors rely on this temporary immigration status to access emergency services and support, while cooperating with law enforcement and working to apply for long-term immigration relief, which is increasingly critical as access to the T Visa becomes more limited by DHS policy (see above). The number of survivors granted Continued Presence decreased again in 2018. “In FY 2018, DHS issued Continued Presence to 121 trafficking victims ... a significant decrease from 160 in FY 2017.”<sup>36</sup> The number of grants remains shocking low compared to the number of T visas issued in the same time period (580).<sup>37</sup> Furthermore, FNUSA members have reported that survivors of sex trafficking are more likely to obtain Continued Presence than survivors of labor trafficking.

---

y; Linton et al, Pediatrics, March 2017,  
<https://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

<sup>36</sup> 2019 TIP Report, p487.

<sup>37</sup> 2019 TIP Report, p487.



38

***Recommendations:*** FNUSA looks forward to the release of additional data in the 2018 and 2019 AG Reports, and we strongly recommend collaboration between DHS and DOJ to prioritize an increase in the number of federal agents submitting Continued Presence applications in 2020. FNUSA recommends that DHS and DOJ analyze their own data to find the regions of the US with the highest disparity in numbers of Continued Presence grants vs. T Visa grants, and to prioritize those areas for intensive training and support to federal and local law enforcement partners. FNUSA also recommends that federal agencies authorize victim-witness personnel at the FBI, US Attorneys' Offices, DOJ Human Trafficking Prosecution Unit, and DHS' Homeland Security Investigations to prepare and submit Continued Presence applications. These personnel are most likely to have the relevant identification information about the survivor, the needs of the survivor, and the status of the case.

#### **10. DHS Remains Complicit in Labor Trafficking of Immigrants in Private Detention Facilities**

FNUSA also calls on the government to address its own complicity in labor trafficking in private detention facilities under contract with the US Government. At least seven lawsuits have been filed in recent years by immigrant detainees who have alleged violations of the Trafficking Victims Protection Act (TVPA) during their detention.<sup>39</sup> These lawsuits – involving ICE detention

<sup>38</sup> CP data is compiled from previous TIP Reports and AG Reports; T Visa data is pulled from USCIS' chart, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t\\_visastatistics\\_fy2019\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr4.pdf)

<sup>39</sup> See, e.g., *Ruelas v. County of Alameda*, 3:19-cv-07637 (N.D.Cal. Nov. 20, 2019); *Barrientos v. CoreCivic*, 4:18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018); *Gonzalez v. CoreCivic*, 1:18-cv-00169 (W.D. Tex. Feb. 22, 2018); *Gonzalez v. CoreCivic*, No. 3:17-cv-02573-AJB-NLS (S.D. Cal. Dec. 27, 2017); *Novoa v. The GEO Group*, No. 5:17-cv-02514 (C.D. Cal. Dec. 19, 2017); *Owino v. CoreCivic*, No. 17-cv-1112-JLS-NLS (S.D. Cal. 2017); *Menocal v. The GEO Group*, 1:14-cv-02887-JLK (D. Colo. 2014). All detention cases are still ongoing.

centers run by private prison companies throughout the country – contain well documented allegations of labor trafficking, with immigrant detainees forced to work for a dollar a day under the threat of solitary confinement and a climate of fear. These claims have been pending for more than 5 years, clearly giving the US Government notice of the conditions at the detention centers. The failure of the US Government to take action to protect these victims, stop these exploitive practices, or to take any action against the corporations, show the US Government’s continued complicity in these acts of human trafficking.<sup>40</sup>

***Recommendation:*** *FNUSA recommends that the US Government immediately discontinue contracting with private corporations for all immigration detention, and join the plaintiffs as amici in their lawsuits against the private corporations who have exploited these immigrants. Further, FNUSA recommends that the US discontinue the egregious practice of widespread immigrant detention, and revert to the former practice of detaining only those immigrants which pose a specific threat to the community.*

### **11. US Guestworker Visa Programs Designed to Allow Labor Trafficking to Thrive**

The nation’s largest guestworker programs continue to be rife with abuse and incidents of labor trafficking.<sup>41</sup> Providers report that overseas recruiters continue to charge excessive fees to workers and to perpetrate fraud and other recruitment abuses, which lay the foundation for human trafficking in the US. Additionally, the structure of the low-wage programs in particular (for example, the H-2A, H-2B and J-1 programs), which generally bind a worker’s lawful status in the US to the employer who sponsored their visa, makes it almost impossible for a worker to leave an abusive employer without facing deportation or economic ruin. Moreover, the lack of oversight by the regulating agencies – including the Departments of State, Labor and Homeland Security – means that law-breaking employers are not held accountable. Despite these issues, Congress and federal agencies continue to support the expansion of these programs without also implementing the necessary reforms to ensure workers are protected.

***Recommendation:*** *FNUSA calls on the federal government to reform these guestworker programs to guarantee robust protections for workers, including visa portability for all guestworkers, robust workers’ rights information provided to all workers both pre-departure and upon their arrival in the US, and robust enforcement against employers and recruiters who have abused or exploited their workers.<sup>42</sup>*

---

<sup>40</sup> For more information, see The Human Trafficking Legal Center Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities, 2018, available at <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-Forced-Labor-in-For-Profit-Detention-Facilities.pdf>.

<sup>41</sup> See, e.g., Francis et al. v. Apex USA Inc. et al, 5:18-cv-00583 (D. Okla.); Chaidez v. Hemphill, 2:18-cv-01837 (E.D. Pa.); Rosas v. Sarbanand Farms, 2:18-cv-00112 (W.D. Wash.); Bernal v. Coleman, 1:18-cv-00088 (W.D. Ky.).

<sup>42</sup> See, e.g., FNUSA’s Comments on RIN 1400-AD14, Proposed Rule, “Exchange Visitor Program – Summer Work Travel,” February 2017, available at <https://freedomnetworkusa.org/app/uploads/2016/10/FNUSACommentsRIN1400-AD14.pdf>; FNUSA’s Human Trafficking and H-2 Temporary Workers, May 2018, available at <https://freedomnetworkusa.org/app/uploads/2018/05/Temporary-Workers-H2-May2018.pdf>; FNUSA’s Human Trafficking and J-1 Visas for Temporary Workers, May 2018, available at <https://freedomnetworkusa.org/app/uploads/2018/05/Human-Trafficking-and-J-1-Visas-May2018.pdf>; and

### ***E. The US Government Must Strengthen Protections for Survivors with Disabilities***

The US Government needs to take more steps to understand the scope and dynamics of trafficking targeting persons with disabilities. In its 2016 Trafficking in Persons Report (TIP), the State Department noted that persons with disabilities are especially vulnerable to human trafficking. The National Human Trafficking Hotline has received reports of more than 2,000 cases of trafficking of persons with disabilities between 2015 and 2017 in the US. We think this is the tip of the iceberg and that more training, better screening, and expanded outreach is necessary to properly identify this population.<sup>43</sup>

***Recommendations:*** *In order to better understand the extent to which anti-trafficking programs are appropriately serving persons with disabilities, FNUSA recommends that the US Government fund research that will document 1) the extent to which service providers are screening survivors of trafficking for either existing disabilities or those resulting from the abuse suffered during the trafficking experience; and 2) the extent to which trafficking services are fully accessible to survivors with disabilities, including, but not limited to, physical, sensory, developmental, and/or communication. Research is also needed to better document the training and resource needs of community programs serving persons with disabilities. The US Government should provide training and technical assistance to all human trafficking services grantees to ensure that they are able to both identify survivors of trafficking with disabilities, and to provide survivors with necessary accommodations in accordance with the Americans with Disabilities Act and related laws. Accommodations may include, but are not limited to, interpreters, specialized transportation services, communication devices, and accessible physical spaces. The US Government should provide training and technical assistance to law enforcement and judicial personnel to ensure that they are able to recognize the trafficking of persons with intellectual and/or cognitive disabilities or in cases where theft of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits are involved.*

### **3. The US Government's Failure to Prevent Human Trafficking**

FNUSA is distressed by the extent to which US policy changes have increased vulnerabilities to human trafficking and reduced access to protection, services, and support for immigrants, people of color, low income communities, and LGBTQ individuals.

#### ***A. Increased Vulnerabilities Among LGBTQ Individuals***

The US Government has taken several actions to remove protections for LGBTQ individuals, including attempts by HHS to redefine gender to be based solely on a person's genitalia at

---

FNUSA's Human Trafficking and Farmworkers, March 2013, available at <https://freedomnetworkusa.org/app/uploads/2018/07/Farmworkers.pdf>.

<sup>43</sup> For more information, see, The Human Trafficking Legal Center Fact Sheet: Trafficking of Persons with Disabilities in the United States, available at <http://www.htlegalcenter.org/wp-content/uploads/Trafficking-of-Persons-with-Disabilities-in-the-United-States-Fact-Sheet.pdf>.

birth,<sup>44</sup> the roll back of Title IX protections in schools,<sup>45</sup> the removal of references to specialized services for LGBTQ communities from grant solicitations for housing and human trafficking programs, the DOJ's reversal of policies to protect transgender people from employment discrimination, the Department of Commerce's removal of sexual orientation and gender identity from the proposed 2020 Census survey, and the DOJ's Bureau of Prisons' decision to use sex at birth to determine trans inmate placement decisions.<sup>46</sup> In a recent study released by the DOJ and the Office of Juvenile Justice and Delinquency Prevention on youth trading sex (and therefore victims of sex trafficking using the federal definition), over half of the individuals surveyed were LGBTQ identified.<sup>47</sup> FNUSA has noted for years that LGBTQ communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and protections.<sup>48</sup> Scaling back these limited protections will only cause further marginalization and increase vulnerability to exploitation and abuse, particularly for LGBTQ youth. Removing the LGBTQ community as a specific population from requests for proposals, not being able to acknowledge affirmative work for that community, determining that transgender individuals are not covered by Title VII protections in the workplace,<sup>49</sup> and advancing religious exemptions<sup>50</sup> are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQ community.

***Recommendation:*** *FNUSA strongly condemns these changes and urges the US Government to immediately reinstate protections that have been removed and to, instead, increase services, protection, and support for LGBTQ communities and individuals.*

### **B. Increased Vulnerabilities of Immigrants, Particularly UACs and LGBTQ Immigrants**

As discussed above, changes in the US Government's immigration policies make it increasingly difficult for immigrant survivors of human trafficking to come forward, and make immigrants, particularly immigrant children and LGBTQ immigrants, increasingly vulnerable to human trafficking.

---

<sup>44</sup> See, e.g., 'Transgender' Could be Defined Out of Existence Under Trump Administration, October 21, 2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?module=inline>.

<sup>45</sup> See, e.g., Justice Department Withdraws Litigation Over North Carolina's HB2, Citing Fake Repeal, April 14, 2017, [http://www.slate.com/blogs/outward/2017/04/14/justice\\_department\\_withdraws\\_from\\_hb2\\_litigation.html](http://www.slate.com/blogs/outward/2017/04/14/justice_department_withdraws_from_hb2_litigation.html).

<sup>46</sup> See, e.g., Bureau of Prisons Rolls Back Obama-era Transgender Inmate Protections, May 14, 2018, <https://www.nbcnews.com/feature/nbc-out/bureau-prisons-rolls-back-obama-era-transgender-inmate-protections-n873966>.

<sup>47</sup> Swaner, et al. "Youth Involvement in the Sex Trade: A National Study," March 2016, available at: <https://www.courtinnovation.org/publications/youth-involvement-sex-trade>.

<sup>48</sup> See, "Spotlight: Unique Vulnerabilities of LGBTQI Community Members", FNUSA 2016 Member Report, p5, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

<sup>49</sup> Savage, Charlie, "In Shift, Justice Dept. Says Law Doesn't Bar Transgender Discrimination," 5 October 2017, available at: <https://www.nytimes.com/2017/10/05/us/politics/transgender-civil-rights-act-justice-department-sessions.html>.

<sup>50</sup> Brief for the Department of Justice, *Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission*, et al, 16-111 (2016).

In particular, FNUSA is deeply concerned about the long-term effects of President Trump's "zero tolerance" and family separation policies at the US-Mexico border, increased detention of unaccompanied alien children (UACs), and the Remain in Mexico program. The trauma caused by family separation and detention puts UACs at an increased risk of human trafficking.<sup>51</sup> Immigrants subject to the Remain in Mexico program are subjected to inhumane conditions in shanty settlements, are frequently abused and exploited by gangs, and have limited access to the legal and social services needed to prepare their immigration cases and heal from the trauma they are fleeing.<sup>52</sup>

In light of the rollbacks in protection for both immigrants and LGBTQ individuals, LGBTQ immigrants are exceptionally vulnerable. The abuses suffered by transgender asylum-seekers at the border, exemplified by the death of trans woman Roxsana Hernandez Rodriguez in ICE custody amid signs of physical assault and abuse,<sup>53</sup> cause increased fear of the US government among LGBTQ immigrants. However, LGBTQ immigrants have come to the US because they are fleeing violence and prejudice in their home countries,<sup>54</sup> and have no choice but to remain in the relative safety of the US. The US Government's refusal to protect LGBTQ immigrants forces them into underground economies, increasing their vulnerability to future abuse including human trafficking.

Additionally, FNUSA is concerned about the long-term effects of the US Government's decision to end Temporary Protected Status (TPS) for several countries and Deferred Action for Childhood Arrivals (DACA). As a result of these policies, tens of thousands of immigrants will be excluded from the labor market and will enter employment situations that are ripe for human trafficking, particularly in light of increased fear among immigrants to report employers.

***Recommendations:*** FNUSA calls on the US Government to limit detention of UACs and to, instead, provide expanded services and legal counsel to UACs after leaving detention, so that these children can receive medical, social, mental health and legal services. FNUSA also calls on

---

<sup>51</sup> For more detail on the harm to human trafficking victims that is posed by family separation and detention, see FNUSA's Comments on the Proposed Flores Regulations, available at:

<https://freedomnetworkusa.org/app/uploads/2018/11/FNUSACommentsProposedFloresRegulation.pdf> .

<sup>52</sup> See KIND, The Border, Trafficking, and Risks to Unaccompanied Children: Understanding the Impact of US Policy on Children's Safety, [https://supportkind.org/wp-content/uploads/2019/12/KIND\\_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf](https://supportkind.org/wp-content/uploads/2019/12/KIND_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf).

<sup>53</sup> See Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse, November 27, 28, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html> ; Transgender Asylum Seeker Was Beaten Before Her Death, According to New Autopsy, November 26, 2018, [https://www.washingtonpost.com/nation/2018/11/27/transgender-asylum-seeker-was-beaten-before-her-death-according-new-autopsy/?utm\\_term=.52e2078cae8e](https://www.washingtonpost.com/nation/2018/11/27/transgender-asylum-seeker-was-beaten-before-her-death-according-new-autopsy/?utm_term=.52e2078cae8e) .

<sup>54</sup> See, for example, Equality to Brutality: Global Trends in LGBT Rights, Human Rights Watch, January 7, 2016, <https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights> ; Trans Murder Monitoring Trans Day of Remembrance 2018 Press Release: 369 reported murders of trans and gender-diverse people in the last year, Trans Respect Versus Transphobia Worldwide, November 12, 2018, <https://transrespect.org/en/tmm-update-trans-day-of-remembrance-2018/> ; 7 Discriminatory (or Deadly) Countries for LGBT People, Amnesty International, <https://www.amnestyusa.org/7-discriminatory-or-deadly-countries-for-lgbt-people/> .

*DHS and HHS to stop using information obtained from potential UAC sponsors and their household members for immigration enforcement purposes. This policy reduces the ability of friends and family members to provide safe and appropriate housing and care for UACs, leading to increased abuse and exploitation of UACs in harmful detention settings.<sup>55</sup> FNUSA also calls on the US Government to immediately repudiate the Remain in Mexico program and revert to the well-established policy of allowing asylum seekers to enter the US to pursue their claims. FNUSA also calls on the US Government to ensure that TPS and DACA recipients are provided a safe path forward in the US.*

### **C. US Law Creates Increased Vulnerabilities Among Sex Workers**

US law, at the federal and local levels, criminalizes consensual commercial sex work.<sup>56</sup> This puts sex workers in a state of constant vulnerability. They are vulnerable to abuse and exploitation at the hands of third party exploiters, customers, and even law enforcement. Sex workers are reluctant to report crimes committed against them, because they report that law enforcement rarely acts to protect them and sometimes abuses them.<sup>57</sup> Even when the abuse rises to the level of human trafficking, survivors are unlikely to come forward to report these abuses to law enforcement. Criminal records from multiple prostitution arrests limits the ability of sex workers to access education, alternative employment, housing, social services, and respect. While states are increasingly decriminalizing minors engaged in commercial sex work, those over the age of 18 are routinely arrested. These factors all combine to put sex workers at high risk of human trafficking.<sup>58</sup>

In the wake of the enactment of Public Law 115-164, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA), many sex workers have reported more unsafe work environments and increased vulnerability to traffickers.<sup>59</sup> Whereas sex workers were previously

---

<sup>55</sup> For more detail on FNUSA's concerns, see comments submitted by FNUSA and 111 other civil rights organizations, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/DHS-HHS-Letter-Final.pdf>.

<sup>56</sup> For an overview of the intersections of human trafficking and sex work, see Human Trafficking and Sex Worker Rights, April 2015, <https://freedomnetworkusa.org/app/uploads/2018/07/HT-and-Sex-Workers-Rights.pdf>.

<sup>57</sup> See, for example, DC, PG Cops Investigated for 'Coercing' Trans Sex Worker, November 19, 2018, <https://www.washingtonblade.com/2018/11/19/d-c-p-g-cops-investigated-for-coercing-trans-sex-worker/>, A Systematic Review of the Correlates of Violence Against Sex Workers, Am J Public Health, May 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987574/>, Abused then Arrested: Inside California's Crackdown on Sex Work, Guardian, November 28, 2018, <https://www.theguardian.com/us-news/2018/nov/28/california-sex-workers-crackdown>, Police Interactions Linked to Increased Risk of Client Violence for Female Sex Workers, January 18, 2019, <https://hub.jhu.edu/2019/01/08/violence-against-sex-workers-police/>.

<sup>58</sup> FNUSA 2016 Member Report at 10.

<sup>59</sup> See, for example, Freedom Network Urges Caution in Reforming the CDA, 2017, <https://freedomnetworkusa.org/app/uploads/2017/10/FNUSAUrgesCautionCDAREform.pdf>, What Is SESTA/FOSTA factsheet from Survivors Against SESTA, [https://survivorsagainstsesta.files.wordpress.com/2018/09/post-sesta\\_0917.pdf](https://survivorsagainstsesta.files.wordpress.com/2018/09/post-sesta_0917.pdf); 'This Bill is Killing Us': 9 Sex Workers on Their Lives in the Wake of FOSTA, Huffpost, May 11, 2018, [https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta\\_us\\_5ad0d7d0e4b0edca2cb964d9](https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta_us_5ad0d7d0e4b0edca2cb964d9); The War on Sex Workers Needs to Stop Now, Rolling Stone, April 13, 2018, <https://www.rollingstone.com/politics/politics-news/the-war-on-sex-workers-needs-to-stop-now-628335/>; Pimps are Preying on Sex Workers Pushed Off of the Web Because of FOSTA-SESTA, Motherboard, April 30, 2018, [https://motherboard.vice.com/en\\_us/article/bjpvqz/fosta-sesta-sex-work-and-trafficking](https://motherboard.vice.com/en_us/article/bjpvqz/fosta-sesta-sex-work-and-trafficking).

able to use online platforms to work more safely and independently, FOSTA has caused many sex workers to rely on intermediaries such as pimps, leading to increased risk of sex trafficking. In fact, one study found that Craigslist's 'Erotic Services' section reduced the female homicide rate by over 17 percent.<sup>60</sup>

***Recommendation:*** FNUSA calls on the US to decriminalize sex work in the US, in order to prevent human trafficking.<sup>61</sup>

#### **D. Weak Social Safety Net Causes Vulnerabilities**

US Government efforts must shift to tackling the issues that make populations vulnerable to abuse and exploitation in the first place. Without dedicating significant resources to uplifting vulnerable communities, exploitation will flourish and trafficking will remain pervasive. Lack of access to safe and affordable housing, child care, living-wage employment, medical and mental health care, effective child welfare interventions, and immigration relief, coupled with ongoing discrimination against people of color, immigrants, and LGBTQ individuals are all direct contributors to vulnerability. A significant reduction in human trafficking requires expanded social services and support for those most vulnerable to exploitation and abuse. The US Government, however, has recently been rolling back protections included in the Affordable Care Act, removing protections for LGBTQ individuals, and increasing indiscriminate immigration enforcement. These changes serve to increase vulnerability to human trafficking and dissuade victims from reporting their exploitation to law enforcement.

***Recommendation:*** FNUSA calls on the US Government to effectively address the root causes of trafficking and exploitation: poverty, insecure housing, discrimination, and a broken immigration system. The US Government must ensure that affordable housing, medical and mental health care, childcare, and education are available to all, and dramatically increase efforts to reform the child welfare system to focus on supporting families, eliminate discrimination and enact comprehensive immigration reform.<sup>62</sup>

#### **E. Prevention Beyond Criminal Justice-Focused Approach**

FNUSA also urges the US Government to expand prevention beyond the criminal justice-focused approach. While law enforcement and prosecution are critical enforcement mechanisms, community education and the creation of positive market forces (through

<sup>60</sup> Scott Cunningham, Gregory DeAngelo, and John Tripp, Craigslist's Effect on Violence Against Women, November 2017, available at <http://designittogether.com/greg/wp-content/uploads/2019/07/Craigslist5.0.pdf> .

<sup>61</sup> For more information, see End Demand Fact Sheet, FNUSA 2018, <https://freedomnetworkusa.org/app/uploads/2018/07/End-Demand.pdf>; Freedom Network Stands in Support of Amnesty International Policy and Report Release, May 2016, <https://freedomnetworkusa.org/app/uploads/2017/01/Amnesty-International-Statement-05262016.pdf>; Human Rights Watch, 8/7/2019, Why Sex Work Should be Decriminalized, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>; Open Society Foundations, Ten Reasons to Decriminalize Sex Work, April 2015, <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>

<sup>62</sup> For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.

programs such as the Coalition of Immokalee Workers' Fair Food Program<sup>63</sup>) are equally important in preventing human trafficking and protecting those who experience abuse and exploitation. In a more broadly focused approach, workers learn their rights, are fairly paid, and can report concerns without fear of reprisal. Additionally, employers gain access to committed buyers and can advertise products that are free of labor trafficking. The US Government's approach to sex trafficking, specifically, has been overly focused on criminal justice interventions, devoting few resources to educating youth and adults and ensuring they have access to fair wages and living conditions. Both youth and adults need resources and support in avoiding homelessness, protection from abuse, and safe alternatives.

***Recommendation:*** FNUSA urges the US Government to more comprehensively address the conditions of vulnerable populations to prevent labor and sex trafficking. By taking a strong public health approach to trafficking the US can move beyond prosecution and into holistic prevention approaches to prevent trafficking from happening.<sup>64</sup>

Thank you for your time and attention to these matters. Please contact me ([jean@freedomnetworkusa.org](mailto:jean@freedomnetworkusa.org)) if you have any questions or need further information.

Sincerely,



Jean Bruggeman  
Executive Director  
Freedom Network USA

---

<sup>63</sup> For more information, see <http://ciw-online.org/>.

<sup>64</sup> For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.